◦ THE HON'BLE SRI JUSTICE BILAL NAZKI

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AND

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THE HON'BLE SRI JUSTICE R. SUBHASH REDDY

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+ W.A.No. 2204 OF 2005

% Dated 10.2.2006

Government of A.P. Revenue (Registration-I) Department

….Appellant

Vs.

$ Mr. L.P. Sashi Kumar & others

….Respondents

! Counsel for appellant: Advocate General

^Counsel for Respondents: Mr. V. Venkat Ramana,

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> HEAD NOTE:

? Cases referred

HON'BLE Mr. JUSTICE BILAL NAZKI

AND

HON'BLE Mr. JUSTICE R.SUBHASH REDDY

W.A.NO. 2204 OF 2005

Dt. 10.2.2006

Between:

Government of A.P., Revenue (Registration-I) Department

…Appellant

and

Mr. L.P.Sashi Kumar and others

…Respondents

HON'BLE Mr. JUSTICE BILAL NAZKI

AND

HON'BLE Mr. JUSTICE R.SUBHASH REDDY

W.A.NO. 2204 OF 2005

JUDGMENT: (Per Hon'ble Mr. Justice Bilal Nazki)

A writ petition being W.P.No. 15247 of 2005 was filed challenging a Government Memo dt. 4.7.2005. The writ petition was allowed and this appeal has been filed by the Government of A.P. The parties shall be referred to as they appear in the writ petition.

It is contended in the writ affidavit filed by 1st petitioner that he had obtained a deed of assignment of decree of undivided share with respect to the land situated in Sy.No. 57 of Hashmathpet village, Balanagar Mandal, Ranga Reddy district which formed part of item No. 2 of schedule IV A annexed to the preliminary decree dt. 28.6.1963 passed in C.S.No. 14/1958. The deed of assignment of decree dt. 21.5.2005 was stamped and also registered as a document (pending) before the Joint Sub-Registrar-I, Ranga Reddy,

Moosapet. An objection was taken by the authorities on the question of sufficiency of stamp duty despite the petitioner gave an undertaking to pay deficiency stamp duty, if necessary and in accordance with law. Since a series of assignment deeds were involved in the suit being C.S.No. 14/1958, the petitioner submitted a representation for clarification about computation/determination of appropriate stamp duty on the assignment of the preliminary decree. In his representation he contended that the proper stamp duty on the assignment deed of preliminary decree was the value mentioned in the deed and not the market value. 2nd respondent passed a clarificatory order on 27.6.2005 clarifying that the proper stamp duty has to be paid on the consideration amount mentioned in the assignment deed. This was communicated to the 3rd respondent. According to the petitioners, this order was passed in terms of Section 56 of the Indian Stamp Act, 1899. But the 1st respondent set aside the clarificatory order passed by the 2nd respondent by the impugned memo on 4.7.2005 without referring to any source of power and without giving any reasons.

So the case of the petitioners in nut shell was that for registration of preliminary decree, they have to pay stamp duty on the value mentioned in the decree and not on the market value and according to them, this was clarified by 2nd respondent and the 1st respondent who set aside the 2nd respondent's order, had no jurisdiction to pass any such order, whereas the 2nd respondent had the power to issue clarifications in terms of Section 56 of the Indian Stamp Act, 1899. It appears that after the writ petition was entertained, the Collector, Ranga Reddy district filed an application being WPMP 25925 of 2005 seeking impleadment as 4th respondent. The Collector in his affidavit claimed that the land belonged to the Government. The learned single Judge dismissed the application, as according to him, the title of the land was not in question and it had been finally decided. He also took note of the submissions made that the preliminary decree passed in CS 14/58 had become final in view

of the fact that the Apex Court has affirmed the same in SLP (Civil) Nos. 10622 and 10623 of 2001, 11996 of 2004. We are not aware as to whether the State Government was a party to the decree or not and in our view the matter relating to the title could not be decided in the writ petition and the observations made by the learned single Judge in WPMP No. 25925 of 2005 have been made only in the context of allowing or dismissing the impleadment of the Collector. The question of title did not fall for consideration of the Court. The only question which was before the Court was whether the memo dt. 4.7.2005 issued by the 1st respondent was legal or not.

Counter-affidavit has been filed by the 1st respondent-Government of Andhra Pradesh in which it stated that the letter dt. 27.6.2005 issued by the 2nd respondent-Commissioner & Inspector General of Registration and Stamps was an administrative instruction and not a statutory order which could have been passed by the Chief Controlling Revenue Authority under Section 56 (3) of the Act. The District Registrar had not made a reference under Section 56 (2) of the Act nor was it a decision communicated under the said section. In the absence of reference under Section 56 (2) of the Act the Chief Controlling Revenue Authority could not have issued clarification under Section 56 (2) of the Act. Since the memo dt. 27.6.2005 was an administrative order, therefore there was nothing wrong on the part of the Government having administrative jurisdiction over the heads of department to keep such order in abeyance or set aside it.

In the light of these pleadings, it is necessary to have a look on the orders passed and also on the relevant provisions of the Indian Stamp Act. The Chief Controlling Revenue Authority i.e., Commissioner & Inspector General Registration and Stamps referred, in his memo dt. 27.6.2005, to three memos and particularly a reference was made to his own earlier memo dt. 11.5.2005. Then he made the clarification in the following terms,

> “Transfer of decretal share in assignment deeds are chargeable as conveyance under Article 20 of Schedule

> IA of I.S. Act as the shares are not apportioned into distinct and separate extent or parcel of identifiable property. Consideration is the criterion for chargeability of stamp duty. And market value is not applicable for the preliminary decrees."

This order was set aside by the Government order dt. 4.7.2005. The petitioners traced the origin of the power under which the Commissioner & Inspector General Registration and Stamps could pass an order under Section 56 (3) of the Indian Stamp Act. Let us have a look of the said provisions. Sub-section (2) of Section 56 of the Act lays down,

> "If any Collector, acting under Section 31, Section 40 or Section 41, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue authority."

Under sub-section (3) of Section 56 of the Act the authority shall consider the case and send a copy of its decision to the Collector, who shall proceed to assess and charge the duty (if any) in conformity with such decision. Before the authority exercises its power under Section 56 (3) of the Act a reference has to be made by the Collector. There are two requirements for a lawful reference viz., (1) that reference should be made by a Collector under Section 56 and (2) that the Collector should act either under Section 31, or Section 40 or Section 41 of the Act and should have also a doubt as to the amount of duty with which any instrument was chargeable.

The learned Advocate General contends that there is no reference in terms of Section 56 (2) of the Act. In the memo dt. 27.6.2005 passed by the 2nd respondent, there is a reference to three letters which are, Memo dt. 30.3.2005, another Memo dt. 11.5.2005 and third one dt. 13.6.2005. It is not clear from the order of

the authority as to whether any reference has been made by the Collector to it. Memo dt. 30.3.2005 was issued from the office of Commissioner and Inspector General of Registration and Stamps, A.P., Hyderabad. Another memo dt. 11.5.2005 is a clarification issued by the same authority and letter dt. 13.6.2005 is not before this Court. Even in the writ petition no mention is made to any reference having been made by the Collector to the authority concerned. Before going to the issue, it would be profitable to have a reference to Sections 31, 40 and 41 of the Act.

Section 31 of the Act lays down,

"31. Adjudication as to proper stamps:-

1. When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding fifteen rupees and not less than five rupees) as the Collector may in each case, direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

2. ……..

There is nothing on record to show that instruments were brought to the notice of the Collector and fee as contemplated under the section had been paid. Therefore even if there was any reference by the Collector under Section 31 of the Act, it was misplaced. Under Section 40 of the Act the Collector has the power to levy stamp duty on the instruments impounded. So, for making a reference under Section 56 (2) of the Act the document must have been impounded in terms of Section 40 of the Act and in this case there is no case of impounding. Section 41 of the Act deals with case where an

instrument was unduly stamped by accident. Perusal of the provisions of the Indian Stamp Act would show that in terms of Section 31 of the Act a person has to apply to the Collector for his opinion as to the duty with which any instrument is chargeable and in terms of Section 40 the instrument should have been impounded and in terms of Section 41 the instrument must have been unduly stamped by accident. None of these three conditions prevailed, therefore even if there was a reference by the Collector, it was not a proper reference and the authority could have not exercised its power under Section 56 (3) of the Act. Even the authority was convinced that there is no reference to him because while answering the so-called reference, he himself had stated that it was a clarificatory order and even the petitioners have contended that it was a clarificatory order. The learned single Judge, in our view, erred in coming to the conclusion that in terms of Section 56 of the Act the Collector had suo motu power, he, in this connection, referred to letter dt. 18.1.2005. In our view, bare perusal of Section 31 of the Act makes it clear that the Collector had no suo motu power, he can only act under Section 31 of the Act when any instrument was brought to his notice and the person bringing it applies to have his opinion as to the duty with which it is chargeable and pays a fee of such amount not exceeding fifteen rupees and not less than five rupees as the Collector may in each case direct. Therefore, in our view, nobody had brought the matter before the Collector in terms of Section 31 of the Act. Although the learned single Judge has referred to an opinion framed by the Collector in his letter, dt. 18.1.2005, that letter is not on record. On the other hand, there is a letter dt. 17.6.2005 written by the Collector to the authority concerned. This letter, by no stretch of imagination, can be said to be a letter in terms of Section 56 (2) of the Act. There is another angle to the controversy. If the order passed by the authority was an order in reference exercising a statutory quasi-judiciary power, then the order could not have been passed without even hearing the parties. Even if it is accepted that a reference had been made by a letter dt. 17.6.2005, it was clear from the collector's letter that he was of the opinion,

> "Once consideration and right in the property transfers that the document is conveyance on sale deed chargeability of stamp duty under article 47-A of Schedule IA to Indian Stamp Act. As per the Sec. 21 of Indian Registration Act no non-testamentary document relating to immovable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.
>
> And the Joint Sub-Registrar-I has stated that huge Government revenue involving in the pending Assignment deeds, hence he sought clarification to avoid any misgivings or any comments by any audit party."

Therefore it was imperative on the authority to give a hearing to the Collector as well. We are of the opinion that the order passed by the authority was not in exercise of the powers vested under Section 56 of the Act and therefore it was an administrative order and could have been set aside by the Government.

For the reasons given hereinabove, the order passed by the learned single Judge is set aside, the writ appeal is allowed and the writ petition is dismissed. No costs.

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BN J.

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RSR J.

Dt. 10.2.2006

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NB:

LR copies to be marked.

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